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Honorable Ronald B. Leighton

Attorneys for Plaintiff  
Foss Maritime Co.

FILED	RECEIVED	LODGED
NOV 21 2006		
CLERK U.S. DISTRICT COURT		
BY	WESTERN DISTRICT OF WASHINGTON AT TACOMA	DEPUTY



06-CV-05598-ORD

Court Use only above this line

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FOSS MARITIME CO., a Washington  
corporation,,

Plaintiff,

vs.

F.V. "JYSHEN NO. 36," a/k/a "BIG SUN #35",  
her engines, machinery, appurtenances, etc., in  
rem,

Defendant.

NO. 3:06-CV-05598-RBL

**ORDER APPOINTING MARINE  
LENDERS SERVICES, LLC  
SUBSTITUTE CUSTODIAN AND  
ALLOWING MOVEMENT OF VESSEL  
AND INSPECTION OF VESSEL**

THIS MATTER having come on for consideration upon plaintiff Foss Maritime Co.'s  
Ex Parte Application for Order Appointing Substitute Custodian; the Court having reviewed the  
pleadings submitted by plaintiff and being otherwise fully advised in the premises; the Court  
hereby finds and rules as follows:

**Recitals**

1. On October 19, 2006, plaintiff Foss Maritime Co. filed its verified Complaint  
herein, requesting that the vessel "JYSHEN NO. 36," a/k/a "BIG SUN #35", Official Number  
unknown, its engines, machinery, and other appurtenances, etc., be condemned and sold to pay  
plaintiff's claims and for other proper relief.

1           2.     It is anticipated that the Clerk of the Court will be authorized by this Court to  
2     issue a Warrant of Arrest commanding the United States Marshal for this District to arrest and  
3     take the defendant vessel into custody and to detain it in custody until further order of this  
4     Court.

5           3.     It is contemplated that the United States Marshal will seize the defendant vessel  
6     forthwith. Custody by the U.S. Marshal requires the services of one or more keepers at a  
7     charge of \$350.00 or more per day for the keepers alone and not including charges for moorage  
8     and the other services usually associated with safekeeping vessel similar to the defendant  
9     vessel.

10          4.     The defendant vessel is currently moored at Foss' vessel mooring facility in  
11     Commencement Bay, Tacoma, near Browns Point. After arrest, it may be necessary to move  
12     the vessel to the facilities of Marine Lenders Services, LLC at 2408 W. Commodore Way,  
13     Seattle, Washington, or to other suitable moorage.

14          5.     Plaintiff is agreeable to allowing Marine Lenders Services, LLC to assume the  
15     responsibility of safekeeping the vessel and Marine Lenders Services, LLC has consented to act  
16     as custodian of the vessel until further order of this Court. Fees and expenses to be charged by  
17     Marine Lenders Services, LLC will be substantially less than the cost of leaving the defendant  
18     vessel in the custody of the U.S. Marshal.

19          6.     Buck W. Fowler Jr, Managing Member, has stated by declaration that Marine  
20     Lenders Services, LLC has no interest in the outcome of this lawsuit, can arrange for adequate  
21     facilities and supervision for the proper safekeeping of the vessel, and has obtained the legal  
22     liability insurance through Northern Assurance Co and Marine Policy No. N5JH81343 with  
23     policy limits of not less than \$1,000,000 which is expected to be adequate to respond in  
24     damages for loss of or injury to the defendant vessel or for damages sustained by third parties  
25     due to any acts, faults or negligence of the substitute custodian. Further, in his declaration,  
26     Buck W. Fowler Jr, on behalf of Marine Lenders Services, LLC has agreed to accept custody

1 of the vessel and its equipment in accordance with the terms of this Order.

2 7. In consideration of the U.S. Marshal's consent to the appointment of Marine  
3 Lenders Services, LLC as substitute custodian, plaintiff agrees to release the United States and  
4 the U.S. Marshal from any and all liability and responsibility arising out of the care and custody  
5 of the defendant vessel and its equipment, from the time the U.S. Marshal transfers custody of  
6 the vessel over to the substitute custodian, and plaintiff further agrees to indemnify and hold the  
7 United States and the U.S. Marshal harmless from any and all claims whatsoever arising out of  
8 the substitute custodian's possession and safekeeping of the vessel.

9 **Order**

10 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

11 1. That upon the seizure of the defendant vessel, the F/V F.V. "JYSHEN NO. 36,"  
12 a/k/a "BIG SUN #35", Official No. unknown, its engines, tackle and other appurtenances  
13 pursuant to the Warrant of Arrest, the U.S. Marshal for the Western District of Washington is  
14 authorized and directed to surrender custody of the vessel to Marine Lenders Services, LLC as  
15 substitute duties and responsibilities for the safekeeping of the vessel and held harmless from  
16 any and all claims arising out of said custodial services.

17 2. That Marine Lenders Services, LLC, as substitute custodian, shall see to and be  
18 responsible for the safekeeping of the defendant vessel. The duties of the substitute custodian  
19 shall include, but are not limited to, ensuring that there is adequate, safe moorage for the vessel.  
20 The substitute custodian is not required to have a person live on board the vessel, but an officer  
21 or authorized agent of the substitute custodian shall go on board the vessel, from time to time to  
22 carry out the duties of substitute custodian. No other person shall be allowed to enter on the  
23 vessel except as provided for herein or as otherwise expressly authorized by order of this Court.

24 3. That the defendant vessel may be moved by tug or other safe means from its  
25 present moorage to adequate, safe moorage at the facilities of the substitute custodian on the  
26 Lake Washington Ship Canal, Commodore Way, Seattle, Washington or other suitable

1 location. The substitute custodian shall notify the office of the U.S. Marshal that the vessel is  
2 to be moved and shall again notify the office of the U.S. Marshal when the vessel has been  
3 moved. Once the vessel has been moved to the facilities of the substitute custodian or other  
4 suitable moorage, the defendant vessel shall not be moved again without further order of the  
5 Court.

6 4. That Marine Lenders Services, LLC, as substitute custodian, may if necessary  
7 offload any other cargo aboard the vessel and arrange for storage of the same at a suitable  
8 facility. The substitute custodian shall notify the office of the U.S. Marshal prior to engaging  
9 in any such offloading of cargo and again upon the completion of any such offloading.

10 5. That Marine Lenders Services, LLC, as substitute custodian, may if necessary  
11 offload any fuel and arrange for disposal of the same. The substitute custodian shall notify the  
12 office of the U.S. marshal prior to engaging in any such offloading and again upon the  
13 completion of any such offloading.

14 6. That Marine Lenders Services, LLC, as substitute custodian, may, but is not  
15 required to, retain a marine engineer familiar with the vessel and to take him or her on board  
16 the vessel with authorized agents of Marine Lenders Services, LLC to assist in the securing of  
17 the vessel.

18 7. That Marine Lenders Services, LLC, as substitute custodian, may, but is not  
19 required to, remove those pieces of electronic equipment on board the vessel, if any, which may  
20 be easily removed without damage to the vessel, and that such removed electronic equipment  
21 shall be stored in a safe, secure storage pending further Order of this Court.

22 8. That Marine Lenders Services, LLC, as substitute custodian, may, but is not  
23 required to, retain such services as are necessary to clean the interior and / or exterior of the  
24 vessel, remove food products with such services to be performed under the supervision of the  
25 substitute custodian.

26 9. That plaintiff shall arrange to pay charged for moorage of the vessel and the

1 fees, costs and legal liability insurance premiums of the substitute custodian and shall  
 2 reimburse the substitute custodian for such other costs as may be incurred in conduction the  
 3 inventory of the equipment on board, in securing the vessel, in having the vessel cleaned, in  
 4 moving the vessel, and / or in offloading any cargo from the vessel.


5 10. That subject to final approval by the Court, all fees, costs and expenses incurred  
 6 by plaintiff or the substitute custodian pursuant to the terms of this Order shall be deemed  
 7 administrative expenses of the U.S. Marshal.

8 11. That plaintiff's attorney shall send a copy of this Order to the owner of the  
 9 defendant vessel at the last address known by plaintiff, and to the address shown on the record  
 10 of the U.S. Coast Guard by Certified Mail, Return Receipt Requested.

11 IT IS FURTHER ORDERED that the substitute custodian may permit boarding and  
 12 inspection of the defendant vessel by marine surveyors, representatives of plaintiff, defendant  
 13 and prospective purchaser's in order to determine the vessel's condition and value at a date and  
 14 time convenient to the substitute custodian. All costs of such boardings and inspections shall  
 15 be paid by such prospective and third party purchasers directly to Marine Lenders Services,  
 16 LLC prior to boarding, such expenses shall not be deemed administrative costs in custodial  
 17 herein. All persons entering on board the vessel shall execute a waiver and release in the form  
 18 attached hereto. The substitute custodian or its employees shall be in attendance at all times of  
 19 such boarding.

20 It is further requested that the Clerk of this Court deliver three certified copies of this  
 21 order to the United States Marshal forthwith.

22 DATED this 20th day of November, 2006

23   
 24 HONORABLE RONALD B. LEIGHTON  
 25 UNITED STATES DISTRICT JUDGE  
 26

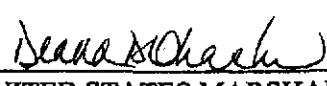
1 *Presented by:*

2 GARVEY SCHUBERT BARER

3  
4 *By s/*

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10 *Approved for Entry:*

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13 UNITED STATES MARSHAL  
Western District of Washington

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ORDER APPOINTING SUBSTITUTE CUSTODIAN  
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